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No. 08-715

Supreme Court, U.S.
FILED
JAN 6 - 2009
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In The

Supreme Court of the United States

JERRY W. DAVIS,

Petitioner,

v.

SIEMENS MEDICAL SOLUTIONS USA, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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January 2, 2009

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STATEMENT OF THE CASE

Petitioner, Jerry Davis, alleged that he was entitled to approximately $1.8 million in sales commissions from his former employer, Siemens Medical Solutions. This was 18 times more than petitioner had earned in previous years at Siemens, more than Siemens paid any of its other 11,000 employees, including its CEO, and more than Siemens paid to all 17 of its other similarly-situated commissioned sales persons combined.

Petitioner advanced a variety of state law claims, including breach of contract, fraudulent misrepresentation, promissory estoppel, conversion, a wage claim under a Kentucky statute and a claim for breach of fiduciary duties. The most important piece of evidence in the case was petitioner's written commission plan, which required that he be "personally and directly" responsible for a sale to earn a commission on it. The trial court granted Siemens' summary judgment on all but one of petitioner's claims, primarily because it was undisputed he was not personally and directly responsible for the sales on which his commission claim was based.

The case went to trial on petitioner's fraudulent misrepresentation claim which was based on an oral promise allegedly made by petitioner's supervisor ***before*** petitioner executed his written commission plan. A jury returned a $200,000 verdict for petitioner. The trial court set aside the verdict and entered judgment for Siemens on the ground that the

petitioner could not have reasonably relied on an alleged misrepresentation that was contradicted by the terms of his subsequent written commission plan. The Sixth Circuit affirmed on this basis in an unpublished *per curiam* opinion. The Sixth Circuit also rejected the statutory wage claim, concluding if it was a claim for commissions, it was defective because no commissions were owed and if it was a claim for base pay, it had been resolved while the case was on appeal.

REASONS FOR DENYING CERTIORARI

This is a routine claim for sales commissions brought by an individual against his former employer under Kentucky state law. Supreme Court Rule 10 provides that "[a] petition for a writ of certiorari will be granted only for *compelling reasons.*" Sup. Ct. R. 10 (emphasis added). The Court should deny the petition because no such "compelling reasons" are present here. Rather, petitioner's arguments, distilled to their essence, are that the trial and appellate courts misapplied Kentucky law and made erroneous factual findings. These are not appropriate grounds for granting a writ of certiorari.

1. Petitioner challenges only the Sixth Circuit's and District Court's application of state law and factual findings.

The petition asserts that the lower courts *misapplied* Kentucky law on his statutory wage claim and on his fraudulent misrepresentation claim. For his wage claim, petitioner acknowledges that the trial court properly stated the terms of the applicable Kentucky statute and subsequently amended its ruling following the ruling in the *Parts Depot* case, but he argues that "the district court mistakenly concluded that the unrelated terms of the Commission Plan did not entitle Mr. Davis to the claimed commissions, bonuses, and guaranteed income." (Petition at p. 8-9). He further argues that the Sixth Circuit "erroneously misstated in its opinion that 'to the extent that Davis' statutory claim is based upon the failure of the defendant to pay the entire base salary promised in the company's guarantee rider, we are informed by counsel that the issue has been resolved out of court to the satisfaction of both parties.'"[1] (*Id.* at p. 10). The first argument asserts that

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[1] Petitioner incorrectly states that Respondent conceded in briefing and at oral argument that Mr. Davis was owed the full guarantee rider. (Petition at p. 10). Respondent has never made such a concession but has instead consistently argued that Mr. Davis waived any claim under the rider when he testified unequivocally in his deposition that he was not owed any money for the guarantee rider. Nevertheless, without conceding its position, Respondent unilaterally paid Mr. Davis the $15,000 he claims he was owed and interest.

the trial court misapplied Kentucky law. The second argument is based on an alleged erroneous factual finding. "A petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

Petitioner's argument that it was erroneous to set aside the jury verdict and enter judgment for Siemens on the fraudulent misrepresentation claim suffers from the same flaws. It is based on the premise that the lower courts misapplied Kentucky common law on fraud and overlooked certain facts. The petition rehashes the facts in the case for seventeen pages, thereby conclusively demonstrating that the primary "asserted error consists of erroneous factual findings." Sup. Ct. R. 10.

2. Petitioner has not presented an issue of national significance.

Petitioner attempts to frame his case as one presenting "important principles of federalism" but it is nothing more than an argument that the lower courts failed to follow Kentucky law. On that point, both the trial court and court of appeals faithfully applied Kentucky law when they arrived at the conclusion it was not reasonable for petitioner to rely on alleged misrepresentation that was flatly contradicted by his subsequent written commission plan and when they rejected his statutory wage claim. However, even if the lower courts misapplied Kentucky law, this

clearly does not present a compelling issue of national significance sufficient to grant the writ of certiorari. "[T]his Court's function, generally speaking, is not to correct federal courts' misapplications of state law, except, perhaps in exceptional cases. . . . I do not believe that this Court has a stake in the correctness of discrete state-law decisions by federal courts." *Thomas v. American Home Products, Inc.*, 519 U.S. 913, 916-17 (1996) (Rehnquist, C.J. dissenting); *see also Leavitt v. Jane L.*, 518 U.S. 137, 145 (1996) ("To be sure, we do not normally grant petitions for certiorari solely to review what purports to be an application of state law. . . .").

3. Petitioner's federalism argument was not raised in or addressed by the lower courts.

Petitioner never raised any Constitutional claims rooted in principles of federalism at any time in this case. Absent a compelling reason (which petitioner does not even attempt to offer), the Supreme Court will not consider issues included in a petition that have not been addressed in the lower courts. *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 168-69 (2004); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 645-46 (1992). Thus, the petition for writ of certiorari should also be denied because petitioner failed to raise below the issue he seeks to present this Court.

CONCLUSION

Petitioner's lawsuit is a garden-variety state law claim for sales commissions. Petitioner has a very heavy burden to justify granting certiorari; one he clearly has not shouldered. He did not plead a violation of any federal laws in his complaint and his petition does not raise any Constitutional issues or implicate principles of federalism in any meaningful way. This Court has repeatedly "emphasize(d), . . . that, standing alone, a challenge to state-law determinations by the court of appeals will rarely constitute an appropriate subject of this Court's review." *Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983). There is no reason to treat this petition any differently. Accordingly, the Court should deny the petition for writ of certiorari.

Respectfully Submitted,

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